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In the Supreme Court of the United States

OCTOBER TERM, 1966.

No. 696

FRANK N. RILEY,
Lake County Engineer,
Petitioner,

vs.

THE STATE OF OHIO
on relation of
WILLIAM BINGHAM,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of Ohio.

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THE STATE OF OHIO
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PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of Ohio.

Petitioner herein, Frank N. Riley, prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Ohio, entered June 15, 1966.

The Supreme Court of Ohio denied an application for rehearing on July 20, 1966, and thereupon the judgment of the said Supreme Court became the law of Ohio on said date, July 20, 1966.

OPINION BELOW.

The opinion of the Supreme Court of Ohio is reported in 6 Ohio State 2d, *State ex rel. Bingham v. Riley, County Engineer.* Said opinion appears in the Appendix hereto.

STATEMENT OF JURISDICTION.

The judgment of the Supreme Court of Ohio was entered on June 15, 1966. The Supreme Court of Ohio denied rehearing on July 20, 1966.

The jurisdiction of this Court is invoked under 28 United States Code, 1257(3) and Rule 19(A) of the Rules of the Supreme Court of the United States, said rule providing for review by this Court on a Writ of Certiorari, "where a State Court has decided a federal question of substance not theretofore determined by this Court, or has decided it in a way probably not in accord with applicable decisions of this Court."

The Ohio Court of last resort, the Supreme Court of Ohio, has denied the petitioner his right to a fair trial and due process granted to him and provided by the Fourteenth and Fifth Amendments of the Constitution of the United States and by Article I, Section 16 of the Constitution of the State of Ohio.

The Supreme Court of Ohio has denied the petitioner the equal protection of the laws as provided by Article XIV, Section 1 of the Constitution of the United States and Article I, Section 2 of the Constitution of the State of Ohio.

QUESTIONS PRESENTED.

Petitioner, the Lake County Engineer, demurred to a Petition for a Writ of Mandamus filed in the Seventh District Court of Appeals for the State of Ohio by respondents seeking to enforce an order from an administrative agency purporting to restore respondents to employment with the petitioner.

During the course of this litigation, the petitioner was secretly indicted by a Lake County Grand Jury.

The Seventh District Court of Appeals for the State of Ohio sustained the petitioner's demurrer in a final order appealed by respondents to the Supreme Court of Ohio. The Supreme Court of Ohio reversed the Court of Appeals and remanded the cause to the Court with directions to overrule the demurrer and allow the Writ without provision for the petitioner to file an Answer or to have a hearing.

The questions presented are:

1. Can the petitioner who contests the allegations of the respondents be denied the opportunity to so contest and deny said allegations by filing his Answer?

2. Can the petitioner be denied by peremptory action his right to a fair hearing when he has appeared and has expressed his continuing desire to contest and deny the allegations of respondents?

3. Is the petitioner to be denied his right to a fair hearing and due process because of prejudicial publicity and related events in his community?

4. Is petitioner to receive the full benefits, privileges and protection of the laws of the United States and the State of Ohio in order to achieve the following results:

A. The preservation of an elected public office;

B. The protection of a public treasury;

C. The preservation of the right to attack collaterally any proceeding for which there was no jurisdiction and which is a nullity from its inception.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

The pertinent portions of the Constitution of the United States and the Constitution of the State of Ohio with appropriate statutes are set forth in the Appendix.

STATEMENT OF THE CASE.

In March, 1965, twenty-one discharged employees of the Lake County Engineer's Road Department filed a Notice of Appeal seeking the benefits of the appellate procedures provided in Chapter 143, Revised Code of Ohio, to obtain job restoration from the Board of Review, State Department of Personnel, Columbus, Ohio. Between April 8th and 21st of 1965, the Lake County Engineer took depositions and a set of interrogatories from the twenty-one Appellees preceding a hearing by the State Board of Review which was held in Cuyahoga County on April 21, 1965.

At the hearing conducted by the State Board of Review, the twenty-one ex-employees of the County Engineer were given the burden of going forward with their case. Both at the commencement of the hearing and at the close of the case-in-chief as presented by the twenty-one ex-employees, the Lake County Engineer moved for a dismissal of the appeals, contending that all twenty-one employees had never been properly classified with the State Classified Civil Service and could not, therefore, con-

fer jurisdiction upon the Board of Review for the State Department of Personnel. The Board reserved its ruling on both motions and the Lake County Engineer presented his case in support of his position, that the twenty-one employees were never classified properly to receive the benefits of State Civil Service, including the benefits of having a determination by the State Board of Personnel Review.

On May 6, 1965, the Board of Review for the State Department of Personnel issued an order purporting to restore twenty-one ex-employees to their former position with the Lake County Engineer. Thereafter, the Lake County Engineer perfected an appeal to the Common Pleas Court of Lake County and upon certification of the transcript to the Common Pleas Court by the State Board of Review, both the Engineer and the twenty-one ex-employees, respectively filed motions to dismiss that appeal. It was the contention of the twenty-one ex-employees that the appeal before the Common Pleas Court was not in accordance with the procedures provided by the Administrative Procedure Act of the State of Ohio and the Civil Service Laws of the State of Ohio, to which laws these employees claimed to benefit. It was the position of the Lake County Engineer that his appeal should be dismissed for the reason that the entire proceedings from their inception were nugatory in that the State Board of Personnel never had jurisdiction in the case, based upon the failure of the twenty-one ex-employees to properly qualify themselves for the benefit of the State Classified Civil Service, including its rights of appeal.

The Court did, in fact, dismiss the appeal in question and in so doing noted that either the State Board had jurisdiction to hear the employees, or it did not, and that if it did not have it there could be no appeal from its order.

The Court further noted that if the State Board of Personnel Review did not have jurisdiction, then its order was a nullity, was not final or appealable and that the Court could not hear an appeal from it. It should be noted that the County Engineer in seeking to have his appeal dismissed requested in the alternative that the case be remanded to the State Board for a determination of the jurisdictional question. While the Court felt that it was powerless to either consider the appeal or to remand the case, the Court did hold that the State Board failed its responsibility in ignoring the question of its jurisdiction.

No further appeal was taken by either party to the controversy from the order of the Common Pleas Court of Lake County. Thereafter, on September 28, 1965, the respondents filed a Petition and Motion for an alternative Writ of Mandamus in the Seventh District Court of Appeals. For the reason that the Petition and Motion filed by the respondents was accompanied by a press conference on the steps of the County Courthouse as well as other contact with the news media, the County Engineer, in addition to demurring to the respondent's Petition, also sought a protective order from the Court of Appeals in order to protect the petitioner, County Engineer, from repeated violations of Canon 20 of the Canons of Professional Ethics of the American Bar Association, and the relation opinion, No. 20, of the Legal Ethics and Professional Conduct Committee of the Ohio State Bar Association. The demurrer filed by the County Engineer was sustained and this Motion for a protective order was overruled as was his subsequent application for reconsideration of his Motion for a protective order. In March, 1966, petitioner was secretly indicted by a Lake County Grand Jury. Respondents brought the controversy before the Supreme Court of Ohio from the judgment of the Seventh

District Court of Appeals sustaining the demurrer of the County Engineer.

On June 15, 1966, the Supreme Court of Ohio reversed the Court of Appeals and remanded the cause to the Court with directions to overrule the demurrer and allow the writ. The County Engineer filed a Motion for rehearing thereafter which was denied by the Supreme Court on July 20, 1966.

HOW FEDERAL QUESTIONS PRESENTED.

The questions here involved were first put in issue in the perfection of the pleadings, during the appearance before the Supreme Court of Ohio, and in the application for rehearing filed with the Supreme Court of Ohio. It must be noted that the case as filed by respondents in the Court of Appeals was decided by demurrer in favor of petitioner without the petitioner being required to answer and appear for trial.

REASONS WHY THIS WRIT SHOULD BE GRANTED.

The petitioner has been denied his right to due process of law by the order of this Court announced June 15, 1966, in that the petitioner has been denied a right to a hearing on the matters pleaded in the Petition in violation of the Fourteenth and Fifth Amendments to the United States Constitution and Article I, Section 16, of the Ohio Constitution.

It is axiomatic that "an opportunity for hearing is one of the essential elements of due process * * *." 16 *Am. Jur.* 2d Constitutional Law, Section 569. The same authority at page 973 makes the following statement:

> "Hence, no one may be legally divested of his property unless he is allowed a hearing before an impartial

tribunal, where he may contest the claim set up against him and be allowed to meet it on the law *and facts* and show if he can that it is unfounded."

At page 979 of 16 *Am. Jur.* 2d, the following appears:

"Due process requires that a party sought to be affected by a proceeding shall have the right to raise such issues or set up any defense which he may have in the cause. *Even if he has no defense to the action, the fundamental law of the land secures to him the right to be heard in his own defense.*" (Emphasis supplied.)

The order of this Court of June 15, 1966, is, in effect, the order for the issuance of a peremptory Writ of Mandamus in the first instance. This procedure is contemplated by Section 2731.06 of the Ohio Revised Code. The issuance of a peremptory writ is improper in the case at bar for the reason that petitioner has never been permitted to deny the factual allegations contained in the Petition of the respondents. Counsel for petitioner represents to this Honorable Court that the petitioner does contest some of the factual allegations contained in the Petition of the respondents. Under these circumstances the Court should not permit a peremptory writ. In the case of *State ex rel. Gulf Refining Co. v. DeFrance* decided by the Court of Appeals for Lucas County, 89 Ohio App. 334 at page 338, the following appears:

"In overruling the demurrer, it is unnecessary to determine the constitutional questions raised. In its brief relator asks that upon the overruling of the demurrer the writ should be made final. Section 12288, General Code, provides that when the right to require the performance of the act is clear and it is apparent that no valid excuse can be given for not doing it, a court, in the first instance, may allow a peremptory writ of mandamus. But a peremptory writ should is-

sue only when the material facts are admitted which disclose that the relator is entitled to relief as a matter of fact as well as of law.

"The demurrer is therefore overruled with leave to the respondents to answer on or before April 7, 1950."

The petitioner has been denied his right to a fair trial and due process concerning the matters pleaded in the Petition herein because of prejudicial publicity in the community. These rights should have been secured to the petitioner, *Tumey v. Ohio*, 273 U. S. 510, 47 S. Ct. 437, 71 L. Ed. 749 (1927) by the Fourteenth and by the Fifth Amendments to the United States Constitution and Article I, Section 16 of the Ohio Constitution. *Sheppard v. Maxwell*, 6 Ohio Misc. 231 (1966).

It is a matter of public record that during the course of this litigation, the petitioner was secretly indicted by a Lake County Grand Jury in March, 1966. See attached exhibits. The publicity attendant to that indictment has prejudiced this case along with the publicity in this case as it has been tried in the newspapers by the respondents.

The order of the Court violates the rights of the petitioner to equal protection of the laws of the State of Ohio as provided by Article XIV, Section 1 of the Constitution of the United States, and Article I, Section 2 of the Constitution of the State of Ohio. The order of the Supreme Court of Ohio denies to the petitioner the benefits of Section 143.012(A) and Section 143.39, Revised Code of Ohio, and in so doing further discriminates against the petitioner and confers special privileges not provided by law upon the respondents.

Section 143.012(A) limits the jurisdiction of the State Board of Personnel Review to appeals of employees in the "classified state service." The order of this Court confers

extra legal jurisdiction upon that Board to the prejudice of the petitioner and the public.

Section 143.39 limits the authority of a County Auditor in the payment of public funds to "classified" employees who have been properly certified to a public payroll by a specified state officer. The order of the Court provides a purported authorization for a possible disbursement of a very large sum of public money from the public Treasury of Lake County, Ohio, in contravention of state law and to the prejudice of the public. Under this order public officials must choose between the order of the Court as it now stands and numerous contrary provisions of law. Section 143.39 of the Revised Code of Ohio provides, *inter alia,* that "any sum paid contrary to this section may be recovered from any officer making such payments in contravention of law and of the rules made in the pursuance of law or from any officer signing or counter-signing or authorizing the signing or counter-signing of any warrant for the payment of the same or from the sureties on his official bond in an action in the courts of this state maintained by any citizen resident therein. All monies recovered in any action brought unto this section must, when collected, be paid into the State Treasury or the Treasury of the appropriate civil division of the state except that the plaintiff in any action shall be entitled to recover his own taxable cost of such action."

The Court has applied the doctrines of *res judicata* and collateral estoppel against the petitioner. The case cited by the Court is not in point with the case at bar.

The doctrine of *res judicata* is applied where there is a final judgment or decree rendered upon the merits by a Court of competent jurisdiction. 132 Ohio St. 404, *Lakewood v. Rees.*

A judgment which is null and void cannot be used as

a basis for the application of the doctrine of *res judicata*. *Tari v. State*, 117 Ohio St. 498.

In order that a judgment may operate as a conclusive determination of a case and be relied upon as a basis for the doctrine of *res judicata* it is necessary that such judgment shall have been rendered by a Court of competent jurisdiction. *Tari v. State*; 117 Ohio St. 498.

It is a fundamental requisite of the doctrine of *res judicata* that the judgment calling for the application of the doctrine must be a final determination of the rights of the parties upon the merits. *Harding v. Talbott*, 60 Ohio App. 523.

A judgment which is null and void is subject to collateral attack. *Tari v. State*, 117 Ohio St. 498.

While it is well settled that a judgment cannot be questioned collaterally for an error committed in the exercise of jurisdiction, the general rule is equally well established that a judgment may be attacked in a collateral proceeding for an error in assuming jurisdiction, Thus, a judgment is subject to collateral attack if the Court which rendered it did not have jurisdiction to render such judgment. *Russell v. Fourth National Bank*, 102 Ohio St. 248.

CONCLUSION.

The petitioner, a public official with a public interest at stake, has been summarily ordered to subject himself, his office and the public treasury to a peremptory order on issues he has vigorously contested without being given the opportunity to answer and appear for trial.

The case has served as a public vehicle to create a climate of public opinion generated in the news media to such an unfavorable extent that the petitioner was indicted secretly during the course of this case. The peti-

tioner is prejudiced in his right to a fair hearing as a consequence of a sequence of news media, publicity and related events virtually placing him at the mercy of the Courts in order to be protected from unilateral and arbitrary proceedings of the kind contemplated by the enactments of the federal government in the field of civil rights. The petitioner has been a victim of forces beyond his control to a point where he and his office became a cause *celebre* whereupon, in addition to being an easy mark for a secret criminal indictment, the petitioner has now become subject to a civil judgment in which he is denied the right to answer and appear for trial. Petitioner has been denied the benefits of the Constitution of the United States, the Constitution of the State of Ohio and the laws of the State of Ohio most summarily.

For the reasons set forth above, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

FRED V. SKOK,
Lake County Prosecuting Attorney,

By ALAN D. WRIGHT,
Assistant Prosecuting Attorney,
Attorneys for Petitioner.

APPENDIX.

STATUTES.

Ohio Revised Code Section 143.012 Powers and duties of state personnel board of review.

The state personnel board of review shall exercise the following powers and perform the following duties of the department of state personnel:

(A) Hear appeals, as provided by law, of employees in the classified state service from final decisions of appointing authorities or the director of state personnel relative to reduction in pay or position, layoff, suspension, discharge, assignment or reassignment to a new or different position classification: the board may affirm, disaffirm, or modify the decisions of the appointing authorities or the director of state personnel, as the case may be, and its decision is final;

Ohio Revised Code Section 143.39 Payrolls.

The auditor of state, or any fiscal officer of any county, city, city health district, or city school district thereof, shall not draw, sign, issue, or authorize the drawing, signing, or issuing of any warrant on the treasurer of state or other disbursing officer of the state, or the treasurer or other disbursing officer of any county, city, or city school district thereof, to pay any salary or compensation to any officer, clerk, employee, or other person in the classified service unless an estimate, payroll, or account for such salary or compensation containing the name of each person to be paid, bears the certificate of the director of state personnel, or, in the case of the service of the city, the certificate of the municipal civil service commission of such city, that the persons named in such estimate, payroll, or account have been appointed, promoted, reduced,

suspended, or laid off, or are being employed in pursuance of sections 143.01 to 143.48, inclusive, of the Revised Code, and the rules adopted under such sections.

Any sum paid contrary to this section may be recovered from any officer making such payment in contravention of law and of the rules made in pursuance of law, or from any officer signing, countersigning, or authorizing the signing or countersigning of any warrant for the payment of the same, or from the sureties on his official bond, in an action in the courts of the state, maintained by a citizen resident therein. All moneys recovered in any action brought under this section must, when collected, be paid into the state treasury or the treasury of the appropriate civil division of the state, except that the plaintiff in any action shall be entitled to recover his own taxable costs of such action.

Ohio Revised Code Section 2731.06 Peremptory writ in first instance.

When the right to require the performance of an act is clear and it is apparent that no valid excuse can be given for not doing it, a court, in the first instance, may allow a peremptory mandamus. In all other cases an alternative writ must first be issued on the allowance of the court, or a judge thereof.

CONSTITUTION OF THE UNITED STATES.

Fifth Amendment—(Rights of Persons).

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces or in the militia, when in actual service in time of war or public danger; nor shall any

person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Fourteenth Amendment, Section I—Rights of Citizens.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CONSTITUTION OF THE STATE OF OHIO.

Article I, Section 2—Right to alter, reform, or abolish government, and repeal special privileges.

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.

Article I, Section 16 (Redress in courts.)

[Suits against the state.] Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

OPINION OF THE SUPREME COURT OF OHIO.

THE STATE, EX REL. BINGHAM ET AL., APPELLANTS,
v. RILEY, COUNTY ENGINEER, APPELLEE.

Civil service—Termination of employment in contravention of law—Appeal from order of board restoring positions, dismissed—Order of restoration res judicata—Mandamus.

(No. 40009—Decided June 15, 1966.)

APPEAL from the Court of Appeals for Lake County.

The 21 relators herein were employed by the respondent, the Lake County Engineer. They were discharged by the respondent, and each filed an appeal with the State Personnel Board of Review. The board held that the "mass firing" of relators was in contravention of the Ohio civil service laws, disaffirmed such terminations of employment, and ordered relators "restored to their positions, retroactive to the date of their terminations."

An appeal to the Court of Common Pleas of Lake County from the decision of the board was dismissed for the reason that the court had no jurisdiction of the subject matter. No appeal was taken from that judgment.

The respondent having failed to restore relators to their positions as required by the board, the instant action in mandamus was instituted in the Court of Appeals, seeking a writ commanding respondent to restore relators to their positions, retroactive to the date of their terminations, pursuant to the decision of the board.

The Court of Appeals sustained a demurrer to the petition for the reason that relators were not in the classified service, found that relators cannot state a cause of action in mandamus in an amended petition, and ordered that the action be dismissed.

An appeal from the judgment of the Court of Appeals brings the cause to this court for review.

Messrs. Lucas, Prendergast, Albright & Warren and *Mr. John A. Brown,* for appellants.

Mr. Fred Skok, prosecuting attorney, *Mr. Alan D. Wright* and *Mr. Barry M. Byron,* for appellee.

Per Curiam. The petition states unequivocally that the decision of the State Personnel Board of Review directed the respondent to restore the relators to their positions retroactive to the date of termination; that respondent has failed to comply with that decision; and that the respondent did not appeal from the judgment of the Court of Common Pleas dismissing the appeal from the board. There being no timely appeal from the decision of the board or from the judgment of the Court of Common Pleas, the matter is *res judicata.* Neither the decision of the board nor the judgment of the court is subject to collateral attack.

The judgment of the Court of Appeals is reversed, and the cause is remanded with directions to overrule the demurrer and allow the writ. *State, ex rel. Jones, v. Ward, Dir.,* 177 Ohio St. 89.

Judgment reversed.

TAFT, C. J., ZIMMERMAN, MATTHIAS, O'NEILL, HERBERT, SCHNEIDER and BROWN, JJ., concur.

MANDATE OF THE SUPREME COURT OF OHIO.

(June 15, 1966.)

To the Honorable Court of Appeals

Within and for the County of Lake, Ohio, Greeting:

The Supreme Court of Ohio commands you to proceed without delay to carry the following judgment in this cause into execution:

Judgment of the Court of Appeals reversed and the cause is remanded to the Court of Appeals with directions to overrule the demurrer and allow the writ. State, ex rel. Jones, v. Ward, Dir., 177 Ohio St. 89.

THOMAS L. STARTZMAN,
Clerk.

ENTRY OF THE SUPREME COURT OF OHIO.

(June 30, 1966.)

Upon consideration of the motion of counsel for Appellee to stay issuance of the mandate and the execution of sentence pending the motion for rehearing filed, it is therefore

ORDERED that the issuance of the mandate and execution of sentence be, and hereby is, stayed until the final determination by this court on Appellee's motion for rehearing.

It is further ORDERED that if such rehearing is denied, this stay shall continue for another 20 days from such date to enable counsel for Appellee to apply to the Supreme Court of the United States for an indefinite stay, as their intentions are to take such appeal.

KINGSLEY TAFT,
Chief Justice.

ORDER DENYING REHEARING.

(July 20, 1966.)

It is ordered by the court that rehearing in this case is denied.

INDICT FRA

KILEY — Lake County Frank N. Riley (center) and daughter Margie 7, walk with County Sheriff Edwin H. Cunningham toward the court house after being served with two warrants stemming ments handed down by a special gran day

Pa

March 4, '66
News Herald

K RILEY

Job Pay-Off Also Denied

BULLETIN

County Engineer Frank N. Riley pleaded innocent about noon to four counts in two warrants of indictment. Three counts were for accepting a reward for employment of an employe and one count was for embezzlement. Bond was set at $500 on each warrant of indictment. Riley posted a $1,000 property bond.

Appearing for the state were Barry Byron, assistant county prosecutor, and Charles E. Cannon, special counsel to the special grand jury. Riley was not accompanied by an attorney.

* * *

Lake County Engineer Frank N. Riley, the center of whirling controversy since he took office Jan. 1, 1965, was indicted today on charges of embezzling and receiving an award for an appointment of an employe.

Riley, composed and cooperative as he faced waiting newsmen, said:

"I'm not guilty of either charge. These indictments are the first knowledge I have of the matter."

The warrants were served on Riley by Sheriff Edwin H. Cunningham shortly after 11 a.m. today. The secret indictment was handed down by a special session of the grand jury yesterday.

Another secret indictment, four other indictments and a "no" bill were also handed down yesterday. Their contents are unknown.

RILEY, HUSKY and silver-haired at 59, was the first Democrat ever elected county engineer. He and his wife

(See page 2, Column 1)

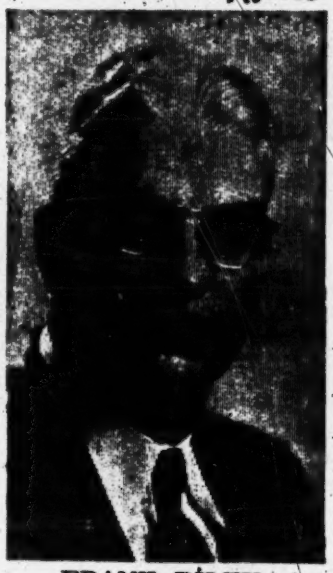
MORE ON RILEY

County GRAND JUR

LAKE COUNTY ENGINEER Frank N. Riley sits with his seven - year - old daughter Margie, in Painesville Municipal Court. Riley picked up his warrant in Municipal Court late this morning.

Firings, Tragedy M

March 4, 66 News Herald



FRANK RILEY

Riley Won Right to Fire 21 Aides

County Engineer Frank N. Riley's term in office has been punctuated with legal battles, verbal battles, large battles and small battles.

But the battle-weary engineer's most widely known battle was over 21 former employes he fired last March, "because they weren't needed." They had been appointed under a Republican regime. Riley is a Democrat.

The 21 appealed their firings to the Ohio Personnel Review Board.

Battle lines were sharply drawn in March when the 21 employes filed appeals with the Personnel Board claiming they had been wrongfully dismissed.

The appeals, filed by John Brown, Ohio Civil Service Employes Assn. attorney, claimed Riley gave no clear reason for letting the employes go, as he should have in the case of civil service employes.

Ohio Law provides that civil service workers can't be fired unless cause is shown.

At the appeals hearing, held in April in Cleveland, the key issue became whether the 21 truck drivers, watchmen, foremen and laborers had civil service status.

BROWN said if they did not, "then the spoils system is rampant in Lake County."

Asst. County Prosecutor represented Riley and defended the engineer's right to fire the 21.

Wright said the employes were not under civil service because none ever took a civil service examination, and "it's not a question of the spoils system, it's just a question of fact."

The Personnel Board ruled that Riley had failed to place his employes in the proper civil service class and all 21 should be reinstated.

Riley, through Wright, appealed the decision in the Lake County Common Pleas Court claiming it was a "nullity" because the men involved were not entitled to the benefits of civil service laws.

BROWN FILED a motion asking that the appeal be thrown out because it was filed in the wrong court. Brown contended that appeals on decision by state agencies must be filed in the Common Pleas Court of Franklin County (Columbus).

Lake County Common Court Judge Robert L. Simmons ruled on Aug. 12, that his court has no jurisdiction in the matter, and, in effect, left the Personnel Board's order standing.

Then, in late September, Brown asked the 7th Dist. Court of Appeals to issue an order forcing Riley to reinstate the fired 21 with back pay in accordance with the personnel board's ruling.

Wright countered by asking the court to throw out Brown's request on the grounds that the 21 workers had not been covered by civil service. The court heard arguments early in November.

Finally, on Dec. 14, the three-man 7th Dist. bench ruled in support of Wright and Riley. The 21 fired workers were not covered by state civil service laws, the court said, because they had never taken civil service examinations for their jobs.

Brown said at the time he expected to appeal the court's ruling but he hasn't yet.

County Grand Present, Past

Jury Hears 5 Riley Aides

By FRED DULANEY

A special session of the Lake County Grand Jury adjourned this morning after hearing tesitmony yesterday from two employes and three former employes of County Engineer Frank N. Riley.

The grand jury today handed down two secret indictments, four other "true bills" and one "no bill." The "no bill" was for Robert G. Maddle. The charge against him was unknown.

The contents of the secret indictments and the true bills were unknown. They were being processed late this morning. The secret indictments could be served by tomorrow morning.

Charles Cannon, Painesville attorney and city councliman, was appointed special prosecutor for this session of the grand jury by Common Pleas Court Robert L. Simmons.

Reports of the investigation were substantially confirmed this morning when Riley called the News-Herald with instant and bitter reaction.

"This whole damn thing is political and it stinks like hell," he told The News-Herald.

"WHAT ELSE can happen?" he asked, not really expecting an answer. "My wife is sick with cancer, I have seven kids to care for. The auditor is holding back $700 of my wife's pay, and the commissioners are holding $300 of road money.

"Now several of my employes have been called before the grand jury. Charlie Cannon (a Painesville attorney) has been talking to some others. Even the foreman of the grand jury has been talking to one of my men. I think that's a little irregular."

All this is going on, Rjley, says "against a background of 20 years of respectful business practice." Then he added: "I guess that's what happens to you when you get into public life."

LISTED ON the grand jury witness docket as scheduled witnesses yesterday were:

Michael Germano, of Chillicothe Rd., Kirtland, who worked for Riley as a laborer in late January and early February of 1965.

Sam Bruner, Davista St., Madison, a watchman in Riley's office.

Earline F. Carpenter, a clerk in the office.

Christopher F. Johnson, 4854 Highland Dr., Willoughby, who began working for Riley, Feb. 14 as a replacement for Mrs. Riley. He was listed as "Clerk V" at $600 a month, but collected only one paycheck for a half - month period.

Paul Hazlett, a former tree trimmer for the county engineer and tenant in one of Riley's homes. Hazlett gave statements to Republican Commissioner Howard B. Beebe Feb. 10 accusing Riley of using county gasoline in his private cars and saying Riley had a barn full of "shovels, forks and small tools marked 'Owned by Lake County.'"

A News-Herald investigation of the barn turned up one shovel marked "Lake Co."

Hazlett also accused Riley of working county employes at his house.

RILEY POSTING BOND—County Engineer Frank N. Riley (right) waits with Sheriff Edwin H. Cunningham (left, second man) while courthouse clerks process Riley's $1,000 bond. Painesville Police Dept. Lt. George Gasper (left) and Riley's daughter, Margie, look on. Gasper was not involved in the proceedings.

March 5, 1966

Clair Is Due on Bench

(Continued from Page 1)

not divulged but Section 2919.03 of the Ohio Code was cited. That section is entitled, "Embezzlement of public property; fraudulent conversion."

That section, in summary, says that no public official shall embezzle or convert to his own use, or conceal with such intent, anything of value that comes into his possession by virtue of his office.

It goes on to say that if the total value of the property embezzled is more than $60 the sentence will be one to 10 years in prison.

Riley yesterday posted two $500 property bonds, one on each indictment. He put up $7,000 worth of property in Mentor-on-the-Lake as security.

HE PLEADED innocent to all counts.

Riley, whose salary as engineer is $12,800 a year, said this morning he does not yet have an attorney.

He said Mrs. Riley has not been told of the indictments and will not be told. She served as Riley's office manager at $7,200 a year until she became gravely ill. She is in a hospital.

Handling of the prosecution, too, was still unsettled this morning. Charles Cannon, Painesville attorney and councilman, was appointed by Judge Simmons as special counsel to the grand jury that investigated Riley.

But the trial prosecution could be handled by any of three persons: Cannon, Fred Skok, county prosecutor, or Barry Byron, assistant county prosecutor. Skok has been on vacation and is not expected back for a week or 10 days.

Byron said today, however, that Skok has been informed of the Riley indictments.

"WE HAVE to review all the facts," Byron said, before the prosecution aligns its case.

Riley is the first public official to be indicted in Lake County in about 30 years, according to courthouse veterans.

He is the first Democrat ever elected county engineer.

Judge Simmons, who presided at the grand jury investigation, is the first Democrat elected judge in the county.

Special Counsel Cannon and the members of the county prosecutor's staff are all Democrats.

Judge Clair is a Republican.

march 5 1966
Telegraph

'How About A Light For Your Smoke'

Engineer Arraigned

Y INDICTS R

Lake County Engineer Frank N. Riley, in his 15th month in office, today stands indicted on four counts — one of embezzlement and three of accepting rewards for appointing of employes.

Charged in one of two secret indictments returned Thursday by the recalled January Grand Jury, he was arraigned near noon today before Common Pleas Judge John F. Clair Jr.

He waived reading of the indictment and service of the indictment and was freed after posting $1,000 property bond.

Appearing at the court proceedings were Assistant Prosecutor Barry M. Byron and Charles Cannon, Painesville attorney recently named by Judge Robert L. Simmons as special counsel. Mr. Cannon conducted investigation and presented facts on the Riley case to the Grand Jury.

The county official, accompanied by his seven-year-old daughter, Margie, drove from his Dodd Road home in Willoughby Hills to Sheriff Edwin Cunningham's office to pick up the warant for his arrest.

He entered the sheriff's office at 11:10 a.m. where behind closed doors he apparently was served official notice of the recalled January Grand Jury's action on Thursday.

Later he appeared in the sheriff's outer office and told assembled newsmen, he was "very shocked about this whole thing." He asserted "It's not true!" and stressed he was concerned about the effects on his family. He and his wife, Mrs. Nellie Riley, who served until the end of February as his office manager and administrative assistant, have seven children.

Second secret indictment handed down by the January Grand Jury, recalled March 1, has not been served. Officials said there are "extenuating circumstances."

First tangible verification that the county official might be under investigation came Thursday when notation appeared in the Grand Jury witness book of five names of present or past employes of Mr. Riley.

Mr. Riley verified for The Telegraph that three of the five are present employe. They are Sam Bruner, employed as a watchman; Christopher F. Johnson of Willoughby, purchasing agent; Mrs. Earline Carpenter — a part-time clerk.

Two of the witnesses called before the Grand Jury Wednesday were discharged employes. One was Michael Germano of Kirtland, whom Mr.

Riley Kitchen Becomes Hotter

When Frank L. Riley sought the office of Lake County engineer and captured it from incumbent Republican J. Floyd Scott by 868 unofficial votes in 1964, he knew the kitchen would be warm but he had no idea of just how hot.

Mr. Riley was defeated in a bid for the engineer's post four years before the 1964 race. At that time, he pulled 36,496 votes cast in a close contest with the late Richard Plummer.

IN OFFICE ONLY one month, he was already the target of barbs tossed not only by the sharp - shooting Republicans but also indignant fellow Democrats.

These have centered on increased personnel resulting in higher overhead; resignations and firings; use of county autos for personal use by both the engineer and his wife, Nellie, who was office manager; an episode in which county truck allegedly cindered the engineer's home driveway, and a spat of road signs which show how to find Frank N. Riley and add as a sort of afterthought that he's located at the engineer's office and that the arrow points the way there too.

As the year unfolded, so did the controversy which clocked the silver - haired, mild - mannered engineer and his combustible wife. Here is a brief resume of the heat that emitted from the Rileys county-based kitchen since taking office:

JAN. 1, 1965 — Frank N. Riley was sworn into the office of Lake County Engineer. He named his wife, Nellie, office manager at a salary of $6,000 a year. Three employes with time of service ranging from two to six years were laid off by Mrs. Riley.

Jan. 28, 1965 — Lake County Commissioner John D. Hadden protested a deluxe dinner planned by Mr. Riley on Feb. 17 for township trustees at Hellriegel's Inn. Hadden charged the event was being "bankrolled by tax money from the engineer's office." Riley claimed it was just a dinner to discuss business and have a social evening.

It was postoned indefinitely.

Feb. 8, 1965 — Threats were received by Frank Riley, his wife and family. An anonymous letter postmarked Feb. 2 Painsville, was sent to Sheriff Edwin H. Cunningham.

FEB. 9, 1965 — Engineer Riley raised the pay of his wife and office manager from $550 to $600 per month retroactive Feb. 1 even though the Commissioners denied and tabled the request until April 1. Commissioners also restricted car use on a 24 - hour basis with one vehicle for Mr. Riley and the other for Anthony Venditti, road superintendent.

The other six radio - equipped cars were ordered to be returned to the county car pool.

Feb. 24, 1965 — Lake County Commissioners received a promise from Riley he would not use a county car to go to church in the future, nor would he have his children as passengers.

FEB. 24, 1965 — Commissioners ordered Riley to remove his name from a county truck.

March 2, 1965—Fifteen men were fired from the Lake County Engineers Department road and garage crews effective March 15. The Rileys claimed it was part of a "reorganization" program.

March 3, 1965 — Mrs. Riley was denied the use of a county car unless she had a legitimate reason and a note from her husband. She said that the March 15 payroll would be held up until the car issue is straightened out.

MARCH 9, 1965 — Miss Kathleen Riley, daughter of Frank and Nellie Riley, received $42 on her father's payroll for three days work in February. She received $1.75 an hour for 24 hours work as a stenographer.

See "Chronology" on Pg. 2

Fights,

County Engineer Rides Headlines

Frank N. Riley, self - styled "underdog," became the first Democratic county engineer in Lake County history on Jan. 1, 1965.

He made headlines instantly with the announcement that his wife, Nellie, would be employed as his office manager.

Riley — often accompanied by his wife — has made headlines regularly since.

In fact, if inches of type and bulging newspaper files are valid criteria, Frank and Nellie Riley were the No. 1 news figures in Lake County during 1965.

The Rileys have been in scraps with countless individuals and governmental agencies. They tangled frequently with the county commissioners — two of whom are also Democrats — and even have locked horns with their own party leaders.

PROBABLY NO one knows for sure exactly how many persons were fired by Riley or quit the engineer's office in the last 14 months. But the total is something over 30. Five of these were key assistants in their jobs a matter of weeks.

Riley's firing of 21 workers, hired by previous Republican administrations, was in the news from early March to mid-December when a court finally upheld Riley's right to fire the employes.

But interspersed through this one were other stories about the Rileys, attacks and counter-attacks, their tiffs with public officials, and their tragedy.

In December, Mrs. Riley underwent brain surgery.

gineer's department would be kept overnight at the county garage.

LATE PAY —Some 50 county road department employes were paid late for the last two weeks of February when Nellie Riley failed to deliver their pay slips on time to the county auditor. Mrs. Riley said she was ordered not to use any county vehicles for business and was waiting for the county to provide her with transportation to the court house with the pay slips.

DAUGHTER PAID — On March 8, it was revealed the Riley's daughter, Kathleen, had been paid $42 for three days work in the county road department.

16 ARE FIRED — Riley announced on March 11 he was firing 16 road department workers and had no plans to hire replacements. Riley stated he fired the men "because we have too many men for the work which can be done at this time of year." The figure later came to 21.

BILLS NOT PAID — The county commissioners of March 22 said they are refusing to pay $1,600 in bills from Riley's office because bids were not sought, they were not signed properly or not payable.

BRIDGE CLOSED — Riley ordered the Rt. 84 bridge in Painesville closed on April 17 for repairs.

SECOND BRIDGE HIT — On April 23, Riley ordered a 10-mile speed limit on the Main St. bridge in Painesville because of its weakened condition.

NO JURISDICTION—On Aug. 11, Common Pleas Court Judge Robert L. Simmons said he had no jurisdiction to act on the dispute between Riley and the 21 fired workers. This left standing the state board of personnel review's order that Riley rehire the 21.

GRASSO QUITS — Albert Grasso, chief mechanic, quit his job. Grasso was the man Riley accused County Administrator Louis Vinocur of trying to "pirate away" a few months earlier.

MRS. RILEY TO QUIT — On Nov. 18, Riley announced that his wife Nellie would resign in six weeks or less because of ill health. Mrs. Riley entered a Cleveland hospital on Dec. 12 to undergo brain surgery. She was released on Dec. 28.

COURT UPHOLDS RILEY — The 7th Dist. Court of Appeals ruled on Dec. 14 that it could not order Riley to rehire the fired 21 workers because they were not covered by Ohio civil service laws.

Here is a summary of Riley's problems:

HIRES WIFE — Upon assuming office, Riley announced his wife, Nellie, had been employed as his office manager at a salary of $550 a month.

DRIVEWAY — A probe of county car usage was touched off by The News-Herald early in January when the newspaper revealed county workers, using a county truck, had cindered Riley's driveway at his home on Dodd Rd. in Willoughby Hills with county cinders after Mrs. Riley got a county car stuck there.

It was also revealed both the engineer and his wife drove county cars home.

BLAMES DEMS —On Jan. 25, Riley blamed the Democratic Executive Committee for forcing him to stay so long at a party caucus that he missed a scheduled appointment dealing with county business.

IGNORES HADDEN — A spokesman for Riley announced Jan. 28 the county engineer will go ahead with plans to sponsor the annual engineer's dinner for township trustees and clerks despite the advice by County Commissioner John D. Hadden that such an event must be cleared through the commissioners.

NELLIE TAKES RIDE — On Feb. 3, The News-Herald revealed Nellie Riley had driven a county car to a meeting in Cleveland. She later declined to give the name of the organization sponsoring the meeting, or the name of the woman passenger with her.

NELLIE THREATENED — A crank letter containing the threat, "We'll get at her some way, sooner or later somewhere. . . This is just a warning. Good Luck," was mailed to Lake County Sheriff Edwin H. Cunningham on Feb. 5.

VENDITTI QUITS — Anthony P. Venditti, county road superintendent, announced on May 8 he is quitting Riley.

RODEN QUITS — Paul Roden, equipment maintenance supervisor for Riley, announced May 8 he was quitting his job. Roden complained Riley had cut his salary by $100 a month.

LARICCIA QUITS — Joe Lariccia, hired in March as an administrative assistant in charge of safety for the county road department, announced May 10, he was quitting.

INVESTIGATION—The News-Herald reported on May 18, the county commissioners have been watching the operation of Riley's department but county officials avoided labeling it "an investigation."

TWO MORE FIRED — The county engineer on May 28 announced the firings of a laborer and a draftsman from his office.

TWO QUIT — On June 9, two more Riley employes handed in their resignations.

BRIDGE REOPENED — County Commissioner John D. Hadden ordered the reopening of the Rt. 84 bridge in Painesville June 10 in defiance of Riley's bridge - closing order.

BRAUN QUITS — William J. Braun, chief deputy engineer under Riley quit his post June 24 and followed by four days the resignation of Riley's other engineer, Raymond Heit.

SON EMPLOYED — County Auditor John Mummey on July 2 revealed he was checking into his records to determine if the Riley's 15 - year - old son, Michael, had a working permit. Mummey said it is possible for a boy under the age of 16 to hold down a certain type job.

PAY HELD UP — About 40 workers under Riley had their pay held up by the county auditor until it could be determined if all employes under 18 had work permits.

WORKS AT HOME — On Jan. 21 it was revealed that Mrs. Riley was still on the county payroll but that she had been working at home on a "pinch-hit" basis since her hospitalization. County Auditor John Mummey says practice is illegal and it should stop.

PAY GOES ON — Mrs. Mable Johnson, former Eastlake mayor, was appointed Riley's office manager on Feb. 1, but Mrs. Riley stayed on the payroll. Auditor Mummey later withheld Mrs. Riley's pay checks until Riley would sign an affidavit that his wife was actually working.

CHARGES MADE — On Feb. 21, Paul Hazlett, an ex-employe, accused the Rileys of converting various public property to their private use.

CALL TO ACTION — On Feb. 25, a News - Herald editorial called for an investigation into the charges of criminal conduct made against Riley.

VETERAN IS OUT — Robert Pearcie, a county road department employe for 25 years, confirmed on Feb. 25 that he was no longer employed in the department. Neither he nor Riley would say whether Pearcie quit or was fired.

MRS. RILEY OUT — Riley announced on March 1 that Mrs. Riley was removed from the payroll the day before.

Engineer Riley Fights For His Freedom, Job

Stormy petrel of the Democratic Party in Lake County since he took office in January 1965, indicted County Engineer Frank N. Riley today is fighting for his freedom and his job.

IF FOUND guilty on receiving "kick backs" from three employes, he forfeits his county job.

In addition, he could be fined up to $500 and sent to prison for not more than a year. If found guilty on all three counts, the fine and sentences could run concurrently or consecutively.

Ohio's code calls for a prison sentence of one to 10 years if a person is convicted of embezzlement.

Meanwhile, Mr. Riley continues on his job under the American policy that a man is presumed innocent until proven guilty.

As an elected official, he hs no boss other than laws for the conduct of his office.

AS COUNTY Commissioner Chairman Robert B. Fulton today stressed, "The whole thing is, we have nothing to say. We (the board of commissioners) are not a law enforcement body. It's up to the courts to decide. We control the budget and that's the only hold we have and we're doing our best."

The commissioner chairman refused to comment further on Mr. Riley's plight.

SIMMONS

CANNON

It was an open secret in political circles that the Lake County Republicans were seeking to benefit politically from the controversies which have raged in the county engineer's department since Mr. Riley took office 15 months ago.

Observers agreed today that most of the thunder had been removed for the GOP inasmuch as leading Democrats played roles in bringing of the Riley case to attention of the Grand Jury.

DANIELS

See "PROBE" on Pg. 2

From Page 1

PROBE

COMMON Pleas Judge Robert L. Simmons started the ball rolling shortly after the January Grand Jury concluded its deliberations. He named Charles Cannon, Painesville attorney, as special counsel to assist the Grand Jury.

Mr. Cannon's findings were reported to the Grand Jury, recalled March 1. Jack Daniels of Mentor, businessman and civic leader, was foreman of the jury.

Mr. Cannon today refused to comment on the Riley case. He said as of now his task is completed as he had been named as special counsel only to assist the Grand Jury.

He said the question of whether or not he would assist in the prosecution when the case goes to trial would depend entirely on the wish of Prosecutor Fred V. Skok.

If Mr. Cannon does assist, he would have to be appointed for the express purpose by court order.

Joseph Sarosy, chairman of Lake County Democratic Party, today refused to comment on the Riley case. "Not a word" was the way he expressed it to a Telegraph reporter.

"No comment" was the answer of Assistant Prosecutor Bryon when asked why it was necessary to employ a special counsel to assist the Grand Jury inasmuch as the department has five attorneys and two investigators.

Riley Probe Long Overdue

Rumors and allegations have swirled around the head of Lake County Engineer Frank Riley and his wife Nellie since the first day he took office less than 15 months ago.

Storm clouds hovered nearly constantly over this elected official in that time. His wife, Nellie, became his office manager, a title which to many indicates the tasks of keeping the office procedure shipshape, the books and payroll in order and taking care of the myriad details that could bog down the efficiency of the engineer.

However, Mrs. Riley was much more than that; she became the field general of the engineer's office, and her authority seemed to match that of her husband.

As the months progressed, it was obvious there were irregularities in the department management. Much of this appeared to be simply mismanagement. But as the rumors grew, it became equally obvious that the public could only be reassured in the integrity of the department through a thorough investigation.

Friday's Grand Jury indictment was the result of a long-overdue probe. We recognize, however, that an investigation of an elected official is not undertaken lightly.

We all must recognize, also, that Frank N. Riley is innocent until proven guilty. But the investigation will serve to clarify the situation in the engineer's department for us all.

HE'S 'SCAPEGOAT'

Ill Wife Rallies in Hospital, Says Riley's Innocent

MRS. RILEY

By FRED DULANEY

Mrs. Nellie Riley, wife of Lake County Engineer Frank N. Riley, sat up in her hospital room for a two-hour interview with two reporters Saturday night to assert her husband's innocence.

The engineer's wife, who has always been at her husband's side during controversy, asked reporters to her room to counter charges brought against Riley in two indictments last Friday.

She apparently learned of the indictments shortly after they had been served. She did not say how.

SHE WAS dressed in a pink housecoat and house slippers. A yarn-ball — for her to squeeze as therapy for her paralyzed right arm — was attached to her palm from a plastic ring.

She cried almost without control before the interview began.

Regaining her composure, she sat in a folding chair, feet crossed, holding her head in her left hand. She seemed very tired.

Her speech impeded by illness, she groped for words in defense of her husband.

"THEY JUST CAN'T get anything on Mr. Riley," she said with a pause between each word. "They are using him as a scapegoat."

"Watch the ball roll now," she said, apparently referring to the patronage ball of the engineer's department.

"They want to take the ball from Frank and divvy it up," she said. She said "they" are two county officials and two leading Democrats.

Twice she said, "I only hope that . . . that . . ." and never finished the sentence.

SHE BROUGHT in several incidents unrelated to the charges against Riley. She appeared hurt and determined to strike back.

"I wish I could . . ." she said, shaking her fist as an indication of her frustration with being unable to talk well. As the evening wore on, it became increasingly difficult for her to speak.

Finally, her anger spent, she relaxed and simply shook her head and stared at nothing.

"Such a way to die," she said, "such a way to die."

The reporters excused themselves.

Engineer's Wife Ill, Hospitalized

Tebeauth

Always by her husband, Frank's side in his greatest hours of triumph and need, Mrs. Nellie Riley is unable to stand at the troubled Lake County engineer's side today.

She is confined to Lake County Memorial Hospital-West where her husband said earlier this week, she will be undergoing physical therapy for her arm.

He was reported to have visited her three times on Thursday.

The 45-year-old mother of the seven Riley children has worked as her husband's office and personnel manager from the time he opened his own engineering business in 1947.

When he was elected to the post of Lake County engineer in 1964, she went right along with him serving in the same capacity as she did in their private business.

I have worked all my life and it seems natural to be out in the business world," Mrs. Riley remarked on her first day as office and personnel manager at a starting salary of $6,000 a year. She also became purchasing agent.

Among her goals when her husband assumed office were to implement a closer control of purchasing and a closer supervision of hours worked and job efficiency.

Mrs. Riley resigned in December, 1965, because of ill health. She underwent radiation surgery in the Cleveland Clinic on Dec. 21 for brain cancer. In January, Mrs. Riley began working out of an office in their 17-room house at 2550 Dodd Road, Willoughby Hills.

A staff secretary went to the house daily to help in requisitions, purchasing and other administrative matters.

Meanwhile, Mrs. Mable Johnson, former Eastlake mayor, was hired as new office manager at the county engineer's department Feb. 1 at the salary of $500 per month—the same paid to Mrs. Riley.

Payroll records in the auditor's office showed both received $300 for the first half of the month.

At the time ex-Mayor Johnson assumed the duties of office manager, the county engineer said his wife would continue at the post only until Mrs. Johnson was oriented in the job.

Christopher Johnson, 34, of Highland Road, Willoughby, was hired Feb. 16 by the Lake County engineer to succeed his wife, Nellie, as head of the purchasing department.

See "Nellie" on Pg. 2

No Politics, Hadden Declares

County Commissioner John D. Hadden says grand jury indictments returned against County Engineer Frank N. Riley are not part of a political vendetta.

Democrat Hadden said "anybody who would say this would be way off base because I've never seen politics involved with a grand jury yet."

THE COMMISSIONER said of fellow Democrat Riley:

"For the man's sake, I hope he can clear himself and come out of this on top."

Hadden stressed that the indictments do not mean Riley is guilty. Only a court can determine that, he pointed out.

Hadden said the indictments show "Lake County is getting out of its rural image" (willing to prosecute outsiders and local residents; not protecting local residents) and that there is "no guarantee to anybody" that the law will not be followed.

"As far as the (Democratic) party is concerned, I have seen no attempt by anybody to stop this.

"I DON'T THINK anybody can accuse the party of trying to sweep this under the carpet or hide it.

"There have been occasions in the not too distant past under past administrations where things have been hidden," he said.

"I think it's a shame that it had to reach this point. I'm sure this is a situation no one wanted to happen."

From Page 1:

Riley Will Fight

Others indicted were Robert Kane, robbery; Robert Barnhouse, breaking and entering, Robert R. Parker Jr., breaking and entering and grand larceny; R. C. Hamblin, carrying a concealed weapon.

A "no bill" was returned in the case of Robert G. Maddle.

Arraignment for the indicted has been set for March 12 at 8:30 a.m. before Judge Robert L. Simmons.

Mrs. Riley Requests Hospital Interview To Defend Husband

By MISS FRANCIS SULLIVAN
County Editor

Enveloped by the shadow of death, desperately ill, Mrs. Nellie Riley insists on staying on the firing line in defense of her husband, indicted County Engineer Frank N. Riley, and operations of his office.

A central figure in the many controversies which have swirled around the county engineer since he took office 15 months ago, Mrs. Riley no longer is his office manager and administrative assistant.

Ravages of brain cancer forced her to give up the post Feb. 28.

SHE NOW IS in Room 540 at Lake County Memorial Hospital — West undergoing physical therapy for her right arm.

I visited Mrs. Riley for an hour in her hospital room at her own request. Her husband said she had been demanding to see reporters and had expressed a wish to visit with me.

As we walked into the softly lighted hospital room, Mrs. Riley was seated in a straight chair beside the bed and was attempting to put on a slipper. At sight of us, she burst into sobs, but quickly stifled them.

DABBING AT HER eyes with a tissue, she motioned for me to pull up a chair in front of her. Her first words were "We have to be precise."

Speaking haltingly due to a speech impediment arising from her illness, she predicted "Watch the ball roll now." Several times during the interview she repeated the same thought—"Just watch the ball go around."

She charged there were persons in high places anxious to get her huband removed from his post and to put in a man of their own choice.

"THEY JUST can't get anything on Mr. Riley and are using him!" she declared.

There were long halts between words as Mrs. Riley sought to express herself. A small black and white ball kept in her right hand by a plastic ring on the middle finger made a sharp contrast to the pink of her embroidered pegnoir and nightgown. Unconsciously, she would squeeze the ball hard as she groped for the right word.

See **"MRS. RILEY"** on Pg. 2

'Just Feel Sort Of Tired'

Riley Will Continue In County Engineer Post

Weary and disturbed but determined to continue in the office to which he was elected in 1964, indicted County Engineer Frank N. Riley today said he will be at his desk early Monday morning.

"It was a long, rough day yesterday—I just feel sort of tired," Mr. Riley says of Friday, the day on which he was served notice he had been indicted by the recalled January Grand Jury.

HE PLEADED innocent to four counts—one of embezzling $480.90 in county funds and three of receiving "kick backs" for appointing certain employes.

Friday noon. He pleaded innocent.

MR. RILEY later this morning left for "a place we own" near Meadville, Pa., as he "promised the kids I'd spend the day with them." The six children at home at the family residence, 2550 Dodd Road, Willoughby Hills, are Padraic, Michael, Lawrence, Joan, Rita and Margaret. The seventh and oldest child, Miss Kathleen Riley, is attending the University of Detroit.

Mrs. Nellie Riley, who worked with her husband as office manager and administrative assistant, on Feb. 28 was forced to give in to the ravages of a long illness and quit her post. She now is in Lake County Memorial Hospital-West.

The county engineer refused this morning to discuss his predicament or his plans. "I am sorry," he said, "I don't like to talk much about it at this time."

HE POINTED out that so far he has not retained an attorney and does not wish to jeopardize in any way his legal battle.

No trial date has been set, according to Assistant Prosecutor Barry M. Byron.

Mr. Riley was named in one of two secret indictments returned Thursday by the Grand Jury.

SHERIFF EDWIN Cunningham today said persons cited in the four true bills returned have been served. The second secret indictment has not been served, the sheriff said, due to extenuating circumstances.

See "RILEY" on Pg. 2

Riley Lawyer Eyes Change of Venue Plea

The attorney for Lake County Engineer Frank N. Riley may ask that Riley's trial be held outside the county.

C. D. (Gus) Lambros has filed a motion in Lake County Common Pleas Court which asks that depositions from three county men be taken.

Lambros asked the court to appoint a commission to take depositions from Republican County Commissioner Howard B. Beebe, County GOP official James K. Collins and former radio newsman Keith Allen.

THE THREE men, Lambros pointed out to the court, taped an interview with a former Riley employe shortly before that employe appeared before the Lake County Grand Jury. The results of that interview were made known to county news media.

The former employe, Paul Hazlett reportedly repeated his testimony to the grand jury which indicted Riley on charges of embezzlement and accepting rewards for employment.

Lambros' brief was filed on the accepting rewards for employment charge only.

Referring to political affiliation of Collins and Beebe, Lambros suggested that the indictment of the Democratic engineer may have had a "political genesis."

He said that public disclosure of Hazlett's testimony may have created adverse news publicity which may prejudice Riley's chances of a fair trial in Lake County.

CITING THE celebrated Sam Sheppard case, Lambros quoted U. S. Supreme Court decision that said, in part: "But where there is a reasonable likelihood of prejudicial news prior to trial, the judge should continue the case until that threat abates or transfer it to another county not so permeated with publicity."

The depositions should be "allowed to assist in the determination as to whether a motion for change of venue should be filed," said Lambros.

The court has not indicated when it will take action on Lambros' brief.

Judge John F. Clair Jr. has twice overruled motions by Lambros to throw out the accepting rewards for employment charge recently.

'ark Riley Story

NELLIE RILEY

Mrs. Riley Called Shots, Many Feel

Frank N. Riley is the titular head of the Riley administration of the engineer's office, but Nellie, his soft - spoken, strong-willed wife, was clearly a major power there until she became ill and left the job.

Many courthouse observers agree that while Riley was the county engineer, Mrs. Riley was the politician, and called many of the shots that made the Rileys Lake County's most controversial officials.

Mrs. Riley, an attractive, middle-aged woman, was remarkably direct in handling questions, either meeting them head-on or flatly refusing to answer them. When forced to answer an embarrassing question, she answered almost inaudibly.

After Riley took office, his wife became office manager at a salary of $550 a month. One month later, on Feb. 1, the pay went up to $600 a month.

BY THIS TIME, she and the engineer were already well known for the county car controversy which broke out between Commissioner John D. Hadden and the Rileys two weeks after they had taken office.

The Rileys were reported to be driving the cars to and from work and Hadden wanted it stopped.

The commission chairman set down a policy that county cars were not to be used on a 24-hour basis by the Rileys and that Mrs. Riley was not supposed to drive them.

When it came time for Mrs. Riley to take the payroll to the county auditor, she refused to take her own car and said she wasn't allowed to use the engineering department cars.

As a result, 50 workers had to wait for their pay. It is about three miles from the engineer's office to the courthouse.

MRS. RILEY'S job in her husband's office was variously described as office manager or personnel manager. Just how effective she has been in managing personnel has been questioned.

Nearly 25 have been fired and numerous employes have quit, including five major aides.

William J. Braun, former chief deputy engineer, was the only one to make any public statement about Mrs Riley.

In his letter of resignation, Braun complained of Mrs. Riley's "persistent attempts to supervise county engineering projects."

On top of that, Braun said it was "impossible to translate her brand of double - talk into intelligible, useful information" and that it was resulting in "chaos" in the engineer's department.

Braun's resignation came shortly after disclosure that Riley had been in the hospital for four days without Braun knowing of it.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966
No. 696

FRANK N. RILEY,
Lake County Engineer,
Petitioner,
vs.
THE STATE OF OHIO
on relation of
WILLIAM BINGHAM,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI To the Supreme Court of Ohio.

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STATEMENT OF JURISDICTION

Petitioner alleges in the Statement of Jurisdiction in the Petition for a Writ of Certiorari that the Ohio Supreme Court decided "a federal question of substance not theretofore determined by this Court, or has decided it in a way probably not in accord with applicable decisions of this Court." This we deny. The Supreme Court of Ohio did not deny the petitioner his right to a fair trial and the due process granted to him and provided by the Fourteenth and Fifth Amendments of the Constitution of the United States and by Article I, Section 16 of the Constitution of the State of Ohio. The Supreme Court of Ohio did not deny the petitioner the equal protection of the laws as provided by Article XIV, Section 1 of the Constitution of the United States and Article I, Section 2 of the Constitution of the State of Ohio.

STATEMENT OF THE CASE

The Statement of the Case by the petitioner in his Brief is different than would be stated by the respondents. The The Statement of the Case in petitioner's Brief does not contain references to the record and we will attempt to do so throughout our Brief.

We agree that in March, 1965, twenty-one discharged employees of the County Engineer's Road Department of Lake County, Ohio, filed an appeal from their termination with the State Personnel Board of Review. These appeals were filed pursuant to the civil service laws of Ohio as contained in Chapter 143 of the Ohio Revised Code. On April 21, 1965, a joint hearing was held before the State Personnel Board of Review in Cleveland, Ohio, on these appeals (R.6). On May. 6, 1965, the State Personnel Board of Review issued its decision with respect to these appeals as shown on page 6 of the record.

Thereafter, although these proceedings are not a part of the record, the Lake County Engineer filed an appeal from the decision of the State Personnel Board of Review with the Common Pleas Court of Lake County. As indicated in petitioner's Brief and in the opinion of the Supreme Court of Ohio shown on page 16 of petitioner's Brief, the appeal was dismissed for the reason that the Court had no jurisdiction of the subject matter. No appeal was taken from that decision of the Lake County Common Pleas Court.

The Lake County Engineer did not comply with the decision of the State Personnel Board of Review, and on September 28, 1965, respondents filed a Petition and a Motion for an alternative Writ of Mandamus in the Ohio Seventh District Court of Appeals (R.1-5). On October 2, 1965, an alternative Writ of Mandamus was issued by the Court (R.9). A demurrer was filed by the Lake County Engineer to the Petition, and on December 13, 1965, the demurrer was sustained by a divided Court (R.14-22). Thereafter, respondents filed an appeal to the Supreme Court of Ohio on January 17, 1966 (R.29). On June 15, 1966, the Supreme Court of Ohio reversed the Court of Appeals and remanded the cause to the Court of Appeals with directions to overrule the demurrer and allow the writ. The County Engineer filed a Motion for rehearing thereafter, which was denied by the Supreme Court of Ohio on July 20, 1966.

Petitioner's Brief contains several pages of attached exhibits claiming that the publicity displayed in these newspaper pages was prejudicial to the petitioner. This Court will note, however, that the record shows that at the time this publicity began, March 4, 1966, this case was awaiting decision by the Supreme Court of Ohio (R.29).

REASONS WHY THIS WRIT SHOULD NOT BE GRANTED

In the argument contained in petitioner's Brief, he repeatedly asserts that he has been denied due process of law in that he has been denied a right to a hearing on the matters pleaded in the Petition. Petitioner has had ample opportunity to have these issues presented to the proper court. Each quotation of authority used by the petitioner in his Brief uses references like "an opportunity for hearing", "the right to be heard", or "allowed a hearing". Petitioner had these rights and has not been denied them. The opinion of the Supreme Court of Ohio makes it specifically clear that had the petitioner taken an appeal properly from the decision of the administrative agency that he could have had reviewed all of the issues he now attempts to assert, The Petition in Mandamus in question plainly states that the petitioner did not appeal from the judgment of the Lake County Court of Common Pleas dismissing his appeal from the administrative agency. Since there was no timely appeal from either the decision of May 6, 1965, of the administrative agency, or the judgment of August 12, 1965, of the Lake County Court of Common Pleas, the matter is now *res judicata*. Neither the judgment of the Court of Common Pleas nor the decisions of the State Personnel Board of Review are subject to collateral attack. *State ex rel. Jones v. Ward, Director* (1964), 177 Ohio St. 89; *Claxton v. Simons* (1963), 174 Ohio St. 332; and *State ex rel. City of Cincinnati v. Geiger, et al.*, (1930), 38 Ohio App. 253.

A similar problem was considered by the Supreme Court of Ohio in the case of *Eggers, et al., v. Moore*, 162 Ohio St. 521, where the Court stated that:

> "Where an administrative agency has jurisdiction to make an order in the matter pending before it, and a right of appeal from such order to the Court of Common Pleas, is provided by law to any person ad-

> versely affected thereby, such person is not authorized to bring an independent action in equity to enjoin the carrying out of such order, where the grounds relied upon in seeking the injunction are such as could be fully litigated in an appeal authorized by law."

We have no wish to belabor this issue unnecessarily and believe that the citations set forth above are an adequate answer to the claim of petitioner.

Petitioner goes on at length in his Brief contending that his right to a fair trial and due process concerning the matters pleaded in the Petition were denied because of prejudicial publicity in the community. We agree that these rights have been secured to the petitioner and every citizen of the United States by decisions of this Court, including those cited by petitioner. However, when the publicity concerning activities of petitioner began in March, 1966, this matter was pending before the Supreme Court of Ohio. The only tribunal that could have been prejudiced by this publicity was the Supreme Court of Ohio. The Brief of petitioner does not show the names of the newspapers in which this publicity occurred, but the handwritten notes on the news clippings indicate the clippings are from newspapers published in Lake County, Ohio. Lake County, Ohio is approximately 150 miles from Columbus, Ohio, where the Supreme Court of Ohio sits. We look in vain in the Petition for even a reference that members of the Supreme Court of Ohio were aware of the events described in those news clippings. It is difficult for us to believe that the Judges of the highest court of our state could have been influenced by these events described in the exhibits, even if they were aware of them.

CONCLUSION

Petitioner has not been denied the opportunity to answer and contest the issues raised in the original proceeding. He did fail to appeal in timely fashion to the proper court. He should not now be permitted to have this Court rescue him from the situation he created. He had his opportunity and he failed to take it. He claims in the Petition to have been a victim of forces beyond his control, but at all times he could have had his review if he had followed the pertinent Ohio statutes.

Respectfully submitted,
Rankin M. Gibson,
John A. Brown,
Lucas, Prendergast, Albright & Warren,
Attorneys for Respondents.

Copy hereof mailed to Fred V. Skok, Lake County Prosecuting Attorney, the 15th day of November, 1966.

Rankin M. Gibson

APPENDIX

STATUTES

Ohio Revised Code Section 119.12 Appeal by parties adversely affected.

Any party adversely affected by any order of an agency issued pursuant to an adjudication denying an applicant admission to an examination, or denying the issuance or renewal of a license, registration of a licensee, or revoking or suspending a license, may appeal from the order of the agency to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident, provided that appeals from decisions of the liquor control commission may be to the court of common pleas of Franklin county. If any such party is not a resident of and has no place of business in Ohio, he may appeal to the court of common pleas of Franklin county.

Any party adversely affected by any order of an agency issued pursuant to any other adjudication may appeal to the court of common pleas of Franklin county, except that appeals from orders of the fire marshal, issued under section 3737.20 of the Revised Code, may be to the court of common pleas of the county in which the building of the aggrieved person is located.

This section does not apply to appeals from the department of taxation.

Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and the grounds of his appeal. A copy of such notice of appeal shall also be filed by appellant with the court. Unless otherwise provided by law relating to a particular agency, such notices of appeal shall be filed within fifteen days after the mailing of the notice of the agency's order as provided in this section.

The filing of a notice of appeal shall not automatically operate as a suspension of the order of an agency. If it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order pending determination of the appeal, the court may grant a suspension and fix its terms. In the event an appeal is taken from the judgment of the court and the court has previously granted a suspension of the agency's order as provided in this section such suspension of the agency's order shall not be vacated and shall be given full force and effect until the matter is finally adjudicated. No renewal of a license or permit shall be denied by reason of such suspended order during the period of the appeal from the decision of the court of common pleas. The final order of adjudication may apply to any renewal of a license or permit which has been granted during the period of the appeal.

Within twenty days after receipt of notice of appeal from an order in any case wherein a hearing is required by sections 119.01 to 119.13, inclusive, of the Revised Code, the agency shall prepare and certify to the court a complete record of the proceedings in the case. Failure of the agency to comply within the time allowed shall, upon motion, cause the court to enter a finding in favor of the party adversely affected. Additional time, however, may be granted by the court, not to exceed ten days, when it is shown that the agency has made substantial effort to comply. Such record shall be prepared and transcribed and the expense thereof shall be taxed as a part of the costs on the appeal. The appellant must provide security for costs satisfactory to the court of common pleas. Upon demand by any interested party, the agency shall furnish at the cost of the party requesting it a copy of the stenographic report of testimony offered and evidence submitted at any hearing and a copy of the complete record.

Unless otherwise provided by law, in the hearing of the appeal the court is confined to the record as certified to it by the agency. Unless otherwise provided by law, the court may grant a request for the admission of additional evidence when satisfied that such additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the agency.

The court shall conduct a hearing on such appeal and shall give preference to all proceedings under sections 119.01 to 119.13, inclusive, of the Revised Code, over all other civil cases, irrespective of the position of the proceedings on the calendar of the court. The hearing in the court of common pleas shall proceed as in the trial of a civil action, and the court shall determine the rights of the parties in accordance with the laws applicable to such action. At such hearing counsel may be heard on oral argument, briefs may be submitted, and evidence introduced if the court has granted a request for the presentation of additional evidence.

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of such a finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. The judgment of the court shall be final and conclusive unless reversed, vacated, or modified on appeal. Such appeals may be taken either by the party or the agency and shall proceed as in the case of appeals in civil actions as provided in sections 2505.01 to 2505.45, inclusive, of the Revised Code. Such appeal by the agency shall be taken on questions of law relating to the constitutionality, construction, or interpretation

of statutes and rules and regulations of the agency and in such appeal the court may also review and determine the correctness of the judgment of the court of common pleas that the order of the agency is not supported by any reliable, probative, and substantial evidence in the entire record. Such appeals may be taken regardless of the fact that a proceeding was pending prior to the amendment of this section expressly authorizing such appeals, provided such appeals are perfected by the filing of notice of appeal within the time prescribed by section 2505.07 of the Revised Code.

The court shall certify its judgment to such agency or take such other action necessary to give its judgment effect.

Ohio Revised Code Section 143.27 Tenure of office; reduction, suspension, and removal.

The tenure of every officer or employee in the classified service of the state and the counties, cities, city health districts, and city school districts thereof, holding a position under sections 143.01 to 143.48, inclusive, of the Revised Code, shall be during good behavior and efficient service and no such officer or employee shall be reduced in pay or position, suspended, or removed, except for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of such sections or the rules of the director of state personnel or the commission, or any other failure of good behavior, or any other acts of misfeasance, malfeasance, or nonfeasance in office.

In any case of reduction, suspension of more than five working days, or removal, the appointing authority shall furnish such employee with a copy of the order of reduction, suspension, or removal, which order shall state the reasons therefor. Such order shall be filed with the director of state person-

nel and state personnel board of review, or the commission, as may be appropriate.

Within ten days following the filing of such order, the employee may file an appeal, in writing, with the state personnel board of review or the commission. In the event such an appeal is filed, the board or commission shall forthwith notify the appointing authority and shall hear, or appoint a trial board to hear, such appeal within thirty days from and after its filing with the board or commission, and it may affirm, disaffirm, or modify the judgment of the appointing authority.

In cases of removal or reduction in pay for disciplinary reasons, either the appointing authority or the officer or employee may appeal from the decision of the state personnel board of review or the commission to the court of common pleas of the county in which the employee resides in accordance with the procedure provided by section 119.12 of the Revised Code.

In the case of the suspension for any period of time, or demotion, or removal of a chief of police or a chief of a fire department or any member of the police or fire department of a city, the appointing authority shall furnish such chief or member of a department with a copy of the order of suspension, demotion, or removal, which order shall state the reasons therefor. Such order shall be filed with the municipal civil service commission. Within ten days following the filing of such order such chief or member of a department may file an appeal in writing, with the municipal civil service commission. In the event such an appeal is filed, the commission shall forthwith notify the appointing authority and shall hear, or appoint a trial board to hear, such appeal within thirty days from and after its filing with the commission, and it may affirm, disaffirm, or modify the judgment of the appointing

authority. An appeal on questions of law and fact may be had from the decision of the municipal civil service commission to the court of common pleas in the county in which such city is situated. Such appeal shall be taken within thirty days from the finding of the commission.